IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.448 OF 2002

Mr.Rahul Bhaskar Patil
and others ..Petitioners

Vs.

State of Maharashtra
and others ..Respondents

....

Mr.A.M.Joshi Advocate for petitioners
Mr.A.S.Shitole A.P.P. for Respondent no.1-State
Mr.Abhaykumar Apte for Respondent no.2.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : OCTOBER 14, 2004

P.C.

1. Heard the learned advocate for the petitioners, learned A.P.P. for State and learned advocate for respondent no.2.

3. The respondent no.2-original complainant was the wife of petitioner no.1. The petitioner nos.2 and 3 are the father and mother of petitioner no.1 and petitioner no.4 is the family friend of

petitioner nos.1, 2 and 3.

4. The petitioners are seeking quashing/setting aside the order of the learned Judicial Magistrate F.C. Court No.9 in Criminal Complaint No.130 of 2001 on Exhibit-19. By the said order, the learned Magistrate rejected the application of the complainant for withdrawing the complaint. The petitioners have also prayed for allowing the parties to compromise the said case and for disposal of the said criminal complaint in view of the compromise between the parties. The said criminal complaint is under Sections 498-A, 323, 352, 504, 506 of IPC r.w. 34 and Section 109 of IPC.

5. It is stated by the learned advocate for the petitioners and learned advocate for respondent no.2 that the Marriage Petition No. 846 of 2000 was filed for divorce by the husband against the wife i.e. respondent no.2 and respondent no.2-wife has also filed a Marriage Petition No. 889 of 2000 for divorce against the petitioner no.1. It is further stated that by virtue of the compromise between the parties, Marriage Petition No. 889 of 2000 filed by respondent no.2-wife was converted

into a petition under Section 13B of the Hindu Marriage Act and a decree of dissolution of marriage by mutual consent came to be passed pursuant to the terms of compromise filed by the parties in the said proceedings. It is further stated that by virtue of compromise arrived at between the parties in the Marriage Petition No.889 of 2000, the petitioner no.1 withdrew his petition i.e. Petition No. 846 of 2000 filed by him in the Family Court, Pune. It is further stated that petitioner no.1 deposited an amount of Rs.1,65,000/- towards one time permanent alimony and litigation expenses for the respondent no.2 in the Family Court. The petitioner no.1 also returned all the ornaments given as gift during the marriage. It is further stated that one of the conditions of the compromise was that the respondent no.2 would get withdrawn/disposed off the private complaint filed by her being Criminal Complaint no.130 of 2001 before the Judicial Magistrate, F.C. Court No.9, Pune. It is further stated on behalf of petitioner no.1 and respondent no.2 that an application came to be filed before the learned Magistrate in the said private complaint for withdrawal of the said complaint. However, the learned Magistrate by order dated 28th

January, 2002 rejected the said application on the ground that offence under Section 498-A of IPC is non-compoundable and as it is a cognizable offence, he has no inherent powers to allow such application. Hence, this petition is filed challenging the said order of the learned Magistrate. In my opinion, no fault can be found with the view taken by the learned Magistrate.

6. However, today, an affidavit has been filed by respondent no.2 Jayashree Rahul Patil who is present before the Court. In the said affidavit, she has stated that she does not wish to pursue her complaint pending before the learned Judicial Magistrate F.C. Court No.9, Pune against petitioner no.1. It is further stated in the said affidavit that the respondent no.2 does not want to defend or resist the present writ petition. The said affidavit dated 14th October, 2004 is taken on record and marked ‘X’ for identification.

7. Looking to the fact that the parties have settled their disputes, in my view, no purpose would be served by continuing with the proceedings relating to criminal complaint No. 130 of 2001 as the complainant-wife does not wish to pursue the

matter any further. Hence, in view of the decision of the Supreme Court in the case of **B.S.Joshi and another Vs. State of Haryana and another reported in Judgment Today 2003(3) S.C. 277,** the proceedings pertaining to C.C.No. 130 of 2001 pending before the learned J.M.F.C. Court No.9, Pune, are quashed and set aside. Rule made absolute accordingly.

. Petition is disposed of. The respondent wife be allowed to withdraw the amount of Rs.1.65 lakhs deposited by the petitioner no.1 before the Family Court.

. Parties be given authenticated copies of this order.

[V.K.TAHILRAMANI,J]